Supreme Court, U.S.
FILED
OCT 24 1987
JOSEPH F. SPANIOL, JR.
CLERK

87-531
No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

JULIA McCAIN LAMPKIN ASAM,

Plaintiff/Appellant,

vs.

LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, AND VINCENT L. DeSHAZO

Defendants/Appellees.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

APPELLEES' MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF

Harry A. Blair, P.A.
Attorneys for the
Defendants, Appellees
2138-40 Hoople Street
Post Office Box 1467
Fort Myers, Florida 33902
(813) 334-2268

0020S

BEST AVAILABLE COPY

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

TABLE OF CONTENTS

	Page
Table of Citations	ii,iii
Motion to Dismiss Appeal	1
Statement of the Case	2
Statement of the Facts	3-4
Summary of Argument	4
Disposition in the Lower Court	4
Statement of Interested Parties	5
Argument and Citation of Authority	5-11
Conclusion	11
Certificate of Service	12
Appendix	13

TABLE OF CITATIONS

Page

Bishop v. Wood, 426 US 341, 48 L.Ed.2d
684, 96 S.Ct. 2074 (1976) 2

Board of Regents v. Roth, 408 US 564, 33 L.Ed.2d
548, 92 S.Ct. 2701 (1972) 2

Burger King Corp. v. Rudzewicz, 471 US 462, 95 L.Ed.2d
528, 105 S.Ct. 2174 (1985) 10

Codd v. Velger, 429 US 624, 51 L.Ed.2d
92, 97 S.Ct. 882 (1977) 2

Dennis v. S&S School District, 577 F.2d 1090
(5th Cir. 1978) 2

Huffstutler v. Bergland, 607 F.2d 1090
(5th Cir. 1979) 2

Rice v. Lee, 477 So.2d 1009 (Fla. 1st DCA, 1985) 9

NLRB v. Pittsburgh SS Company, 340 US 498, 95 L.Ed.2d
479, 71 S.Ct. 453 (1951) 11

Paul v. Davis, 424 US 693, 47 L.Ed.2d
405, 965 S.Ct. 1155 2

Thornburg v. American College of Obstetricians and
Gynecologists, 476 US , 90 L.Ed.2d
779, 106 S.Ct. 2169 (1986) 10

STATUTES CITED

Federal

18 USC §1503 6

28 USC §1254 6,10

28 USC §1254(1) 10

28 USC §1343(3) 6

28 USC §2106 6,10

42 USC §1983 2,6

42 USC § 20002 9

RULES CITED

Supreme Court

Rule 17 10

Federal Rules of Procedure

Rule 15.1(c) 5

Rule 16.1(a) 1,5

Federal Rules of Evidence

Rule 404 8

STATUTES CITED

Florida Statutes

Chapter 119, Fla. Stat. 9

§443.041(3), Fla. Stat. 9

§443.171(7), Fla. Stat. 9

§768.28, Fla. Stat. 9

MOTION TO DISMISS APPEAL AND APPELLEES' BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS AN APPEAL TO THE UNITED STATES SUPREME COURT

MOTION TO DISMISS APPEAL

COME NOW the Defendants, LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF and VINCENT L. DeSHAZO, by and through their undersigned attorneys, HARRY A. BLAIR, P.A., and herewith move this Court to dismiss the appeal of JULIA McCAIN LAMPKIN ASAM to this Court pursuant to Rule 16.1(a) on the ground that the appeal is not within this Court's jurisdiction and because the appeal is not taken in conformity with the rules of this Court.

STATEMENT OF THE CASE

In 1982 Ms.Asam filed suit against The School Board, the individual members of the School Board, the Superintendent of Schools and the Director of Personnel. The suit sought monetary damages and other relief under 42 U.S.C. § 1983 alleging that Ms. Asam's reputation had been stigmatized in the process of non-renewal of her annual teaching contract. **Huffstutler v. Bergland,** 607 F.2d 1090 (5th Cir. 1979); **Dennis v. S&S School District,** 577 F.2d 338 (5th Cir. 1978); **Paul v. Davis,** 424 US 693, 47 L.Ed.2d 405, 965 S.Ct. 1155, reh. den. 425 US 985, 48 L.Ed.2d 811, 96 S.Ct. 2194 (1976); **Codd v. Velger,** 429 US 624, 51 L.Ed.2d 92, 97 S.Ct. 882 (1977); **Board of Regents v. Roth,** 408 US 564, 33 L.Ed.2d 548, 92 S.Ct. 2701 (1972); **Bishop v. Wood,** 426 US 341, 48 L.Ed.2d 684, 96 S.Ct. 2074 (1976); A second pendent count sought damages for defamation of character. At the end of a two-day jury trial the District Court entered a directed verdict for the Defendants on both counts. Ms. Asam thereafter appealed. The Defendants filed a Motion for Attorney's Fees in the District Court on the basis that the suit was frivolous. The District Court denied the Defendants' Motion for Attorney's Fees. The Defendants then appealed the Order denying attorney's fees. The appeals were consolidated by an Order of the Court of Appeals dated June 20, 1986. The Court of Appeals then affirmed.[1]

[1]See Appendix

STATEMENT OF THE FACTS

Ms. Asam was employed as an earth science teacher by the School Board for the 1976-77 school year and the 1977-78 school year. She was an annual contract teacher without tenure. In May 1978, the Superintendent wrote Ms. Asam a letter advising her he would allow her annual contract to expire and that she would not be recommended for reappointment for the following school year.

Ms. Asam then filed for unemployment compensation in June 1978. The Division of Unemployment Compensation then sent an unemployment compensation inquiry form to the Director of Personnel. In turn, the Director of Personnel checked the block titled "discharged for misconduct connected with work." He also made a notation on the form that Ms. Asam's contract was allowed to expire and that the School Board did not have employment for her. He signed the form, dated his response June 15, 1978, and returned same to the State by mail the same day. After receiving the employer's response, Ms. Asam was summoned to the Division of Unemployment Compensation on June 19, 1978, and made a written statement contesting the fact that the Personnel Director had reported she had been discharged for misconduct connected with her work. The same document contains a comment that the caseworker contacted the Personnel Director by telephone the same day. The Personnel Director immediately made a telephonic correction and advised the State that Ms. Asam had not been discharged for misconduct connected with her work and that the School Board had no ground to contest the unemployment claim. Thereafter a corrected form was mailed to the Personnel Director and received June 21, 1978. The Personnel Director executed the corrected form and returned it to the State the same day by mail. Both of these forms were placed in Ms. Asam's personnel file.

On September 20, 1978, Ms. Asam wrote a letter to the School Board and the Superintendent. Basically, the letter complained about the principal and assistant principal at the school where Ms. Asam taught. The letter also requested that the Personnel Director make a written apology to Ms. Asam because of the response he had made to the State indicating that she had been discharged for misconduct connected with her work. The letter also requested that the Personnel Director submit a new form

containing the correct information (which had already been done).

In August 1978, Ms. Asam then filed a complaint against the School Board with the EEOC alleging sex discrimination which resulted in her contract not being renewed. In response to the Complaint the EEOC directed the School Board to submit a copy of Ms. Asam's entire personnel file to it.

Not until May 1982, did the School Board again hear from Ms. Asam. At that point Ms. Asam again complained about the Personnel Director's report to the Division of Unemployment Compensation that Ms. Asam had been discharged for misconduct connected with her work. The letter added a new complaint—the School Board had sent copies of the contested unemployment compensation form to the EEOC in Miami. Ms. Asam's letter stated that her chances of employment had been ruined between the four (4) year period that she had last worked for the School Board and the writing of the letter alleging that the School Board's action was malicious and defamatory and that her constitutional rights had been violated. The letter threatened litigation. The pertinent part of the letter alleges that the School Board was disseminating the false information contained in the original unemployment compensation form and demanded that the School Board cease and reinstate Ms. Asam with full back pay and benefits. The following month Ms. Asam then filed suit in the United States District Court.

SUMMARY OF ARGUMENT

Ms. Asam's jurisdictional statement contains not one ground which would give this Court jurisdiction of this appeal. Neither does she state any grounds for certiorari.

DISPOSITION IN THE LOWER COURT

The Court of Appeals disposed of Ms. Asam's appeal with an unpublished written opinion. That opinion is reproduced as the sole exhibit[1] in the Appendix. The Court of Appeals did not consider, either expressly or by implication, any state statute as being repugnant to the Constitution, treaties or laws of the United States.[2]

---

[2]A petition for rehearing was denied and a suggestion for rehearing en banc denied on July 22, 1987, by the Court of Appeals.

STATEMENT OF INTERESTED PARTIES

The Defendants/Appellees are Lee County District School Board, 2055 Central Avenue, Fort Myers, Florida 33901; Mrs. Rayma C. Page, former Chairman, 2412 Kent Avenue, Fort Myers, Florida 33907; Mr. Howard DeVore, former School Board member, 3173 Palm Beach Blvd., Fort Myers, Florida 33901; Mr. John William Mills, former School Board member, 2212 River Oak Lane, SE, Fort Myers, Florida 33905; Mr. John F. Beckett, former School Board member, 2925 Cortez Blvd., Fort Myers, Florida 33901; Mr. Robert L. Ratliff, former School Board member, 9464 Lakeview Blvd., North Fort Myers, Florida 33903; Mr. Ray V. Pottorf, former Superintendent of Schools, 950 Aqua Lane, Fort Myers, Florida 33903; Mr. Vincent L. DeShazo, former Personnel Director, 5084 Westminister Drive, Fort Myers, Florida 33907; and the attorney for the Lee County District School Board (Lee County School Board), Mr. Harry A. Blair, 2138-40 Hoople Street, Post Office Box 1467, Fort Myers, Florida 33902.

The Plaintiff/Appellant is Julia McCain Lampkin Asam (Julia L. Asam).

ARGUMENT AND CITATION OF AUTHORITY

A cursory review of Ms.Asam's jurisdictional statement is ground enough to dismiss this appeal under Rule 16.1(a) which requires that an appeal be taken in conformity with the rules of this Court. The brief completely ignores Rule 15.1(e) which provides that the jurisdictional statement shall contain:

> A **concise** statement of the grounds on which the jurisdiction of this Court is invoked...

The brief is a potpourri of arguments which ignore both the rules of this Court and the applicable statute governing appeals.

An attempt to analyze Ms. Asam's jurisdictional statement reveals that the following points are made in support of appellate jurisdiction to this Court from a Court of Appeals:

> 1. The Court of Appeals found §119.001(1), Fla. Stat., unconstitutional (Jurisdictional statement, page 6).
>
> 2. The Court of Appeals affirmed this case in conflict with its own decisions (Jurisdictional Statement II and III, pages ii-v).

3. The District Court obstructed justice [18 USC §1503] and violated the due process clause of the Fifth Amendment when the Court advised Ms. Asam that "you are your own worst enemy." (Jurisdictional statement, page 4).

4. The District Court violated Ms. Asam's Seventh Amendment rights to a trial by jury when the Court bifurcated the trial as the the liability and damage issues (Jurisdictional statement V, pages vi-xix).

5. Ms. Asam incorporated all the issues raised before the Court of Appeals in her fifth issue. This includes seventeen (17) issues and numerous sub-issues, all of which are directed to the merits of the case and not jurisdiction.

6. Ms. Asam incorporated all of the questions and-issues she raised to the Court of Appeals in her petition for rehearing. These are all directed to the merits and not to jurisdiction.

Although Ms. Asam proudly touts a law degree as one of her titles, her brief is disorganized, rambling and largely incoherent. She characterizes this "appeal" as the case of "PHANTOM DOCUMENT #34" (Jurisdictional statement, page 16). She then baldly states that the Court of Appeals failed to read her brief and the record (Jurisdictional statement, pages 16-17), charged the District Court with obstructing justice because the Court told her "you are your own worst enemy," a statement she repeats dozens of times, and then hopefully attempts to "bootstrap" an appeal by making the unsupported assertion that the Court of Appeals held a Florida statute [§119.011(1)] unconstitutional.

In her brief on jurisdiction Ms. Asam seeks to invoke the jurisdiction of this Court under the following statutes:

28 USC §1254
28 USC §2106
42 USC §1983
28 USC §1343(3)
18 USC §1503

None of the above statutes support an appeal to this Court from a Court of Appeals. The controlling statute is 28 USC §1254 which provides:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
> (2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;
> (3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

The only ground for an appeal from a Court of Appeals to this Court is contained in subsection 2 of the above quoted statute which provides for a right of "...appeal by a party relying on a State statute held by a Court of Appeals to be invalid under the Constitution, treaties or laws of the United States..." Such is certainly not the case **sub judice.**

None of the other three (3) statutes cited by Ms. Asam in her notice of appeal even tangentially support an appeal to this Court from a Court of Appeals. Hence, they will not be discussed.

A reference to Ms. Asam's "jurisdictional statement" reveals that the following issues were discussed in support of **jurisdiction** under issue five:

1. A directed verdict entered by the District Court constituted an abuse of discretion, with numerous sub-issues;
2. Whether the stigma-plus elements were proven at trial;
3. Whether an unemployment form is a public record;
4. Whether Ms. Asam was given due process in her discharge;
5. Whether Ms. Asam was damaged as a matter of law, with numerous sub-issues;

6. Whether the District Court abused its discretion by stating "you are your own worst enemy";

7. Whether the District Court violated Federal Rule of Evidence 404, with two sub-issues stated;

8. Whether the District Court erred in dismissing individual school board members from the suit;

9. Whether the District Court failed to follow the case law in four (4) instances;

10. Whether the District Court abused its discretion by denying Ms. Asam's motion to hold Mr. DeVore, a school board member, in contempt of court;

11. Whether the trial court abused its discretion in not allowing completion of relevant discovery, with numerous sub-issues;

12. Whether the trial court erred by not allowing motions to amend the complaint, with numerous sub-issues.

13. Whether the trial judge abused his discretion by not allowing the Plaintiff to put on her case first;

14. Whether the trial court erred by denying a motion to strike the Defendants' directed verdict;

15. Whether the trial judge clearly committed a reversible error by not allowing the Plaintiff to "state" admissions of party opponents;

16. Whether the trial court committed reversible errors of law by not admitting relevant documents into evidence;

17. Whether the trial court abused its discretion by making the Plaintiff pay costs.

The subjects she has incorporated under issue six are discussed briefly hereinafter.

Ms. Asam makes a statement unsupported by the record that the Court of Appeals held a Florida statute unconstitutional. That statute provides:

> For purposes of this chapter: (1) Public records means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency... Sec. 119.011(1), Fla. Stat. (1978)[3]

Ms. Asam's jurisdictional statement then audaciously asserts that the Court of Appeals held the statute unconstitutional, or repugnant to a treaty or law of the United States. A cursory reading of the Court of Appeals' decision reveals that it is not even remotely concerned with the statute which Ms. Asam tosses before the Court. A reading of the jurisdictional statement indicates that in some way Ms. Asam thinks the Court of Appeals declared the subject statute unconstitutional because they held her unemployment compensation reporting form was not a public record, even though it was contained in her personnel file. The Court of Appeals did not even reach that issue by implication. Sad to say, Ms. Asam never grasped the basic idea that her claim for defamation was fatally deficient. First, she failed to file a claim against the School Board as required by §768.28, Fla. Stat., which also specifically provides that no employee or officer in public service shall be personally liable in tort or named as a party Defendant in any action unless he acted in bad faith with malicious purpose or in willful and wanton disregard of human rights. **Rice v. Lee,** 477 So.2d 1009 (Fla. 1st DCA, 1985). Secondly, the form that was sent to the EEOC was a privileged communication and the statute specifically provides that the file shall not be made public. 42 USC §2000e-5(b). Additionally, the communication was **absolutely** privileged by statute. §443.041(3), Fla. Stat. Further, under §443.171(7), Fla. Stat., there could be no publication since the form in question was both confidential and exempt from the Public Documents Act, Ch. 119, Fla. Stat. Thus, "PHANTOM DOCUMENT #34" was never a public record.

---

[3]For purposes of this appeal the statute has remained essentially the same to date.

This Court has previously held that an appeal will not lie from a court of appeals where the court of appeals did not hold the entire state statute unconstitutional, but instead invalidated some provisions and ordered other features of the case remanded to the District Court. **Thornburgh v. American College of Obstetricians and Gynecologists,** 476 US___, 90 L.Ed.2d 779, 106 S.Ct. 2169 (1986). In such a case this Court treats such an appeal as a petition for certiorari. Likewise, this Court has held that the appellate jurisdiction of this Court can be invoked only where a court of appeals has squarely held that a state statute is unconstitutional on its face or as applied, and that it must be reasonably clear that the court of appeals independently concluded that the challenged statute governs the case and held the statute itself unconstitutional. **Burger King Corp. v. Rudzewicz,** 471 US 462, 95 L.Ed.2d 528, 105 S.Ct. 2174, (1985). In this case there is no such showing and the appeal should be dismissed.

Likewise, this "appeal" does not support a writ of certiorari to the court of appeals pursuant to 28 USC §1254(1). Rule 17, S.Ct. Rules, indicates the character of reasons that will be considered for a writ of certiorari. They are:

> (a) a conflict of decisions between federal courts of appeals;
> (b) a conflict of decisions between a federal court of appeals and a state supreme court;
> (c) a departure from the essential requirements of law;
> (d) a conflict of decisions between two (2) state supreme courts; and
> (e) an important federal question which has not previously been decided by this court.

It is therefore apparent that 28 USC §2103 is not applicable. That statute provides that if an appeal to the Supreme Court is improvidently taken from a court of appeals, in a case where the proper mode of review is by petition for certiorari, that the court can consider the appeal as a writ of certiorari. However, the appeal must fall within the guidelines for certiorari for the statute to apply. This court has held that certiorari is granted only in cases involving principles, the settlement of which is important to

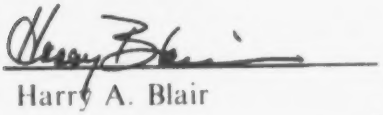
the public as distinguished from the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between courts of appeal. **NLRB v. Pittsburgh SS Company**, 340 US 498, 95 L.Ed. 479, 71 S.Ct. 453, (1951). Such is not the case herein.

CONCLUSION

This appeal should be dismissed. It is clearly frivolous.

Respectfully submitted,

HARRY A. BLAIR, P.A.
Attorneys for APPELLEES
2138-40 Hoople Street
Post Office Box 1467
Fort Myers, Florida 33902
(813) 334-2268

By 
Harry A. Blair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) true and correct copies of the foregoing was furnished by United States Mail to JULIA McCAIN LAMPKIN ASAM, Post Office Box 1022, University, Alabama 35486, on this 23 day of October 1987.

HARRY A. BLAIR, P.A.
Attorneys for APPELLEES
2138-40 Hoople Street
Post Office Box 1467
Fort Myers, Florida 33902
(813) 334-2268

By Harry Blair
Harry A. Blair

APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 86-3142
Non-Argument Calendar

DO NOT PUBLISH

JULIA L. ASAM,

Plaintiff-Appellant,

versus

LEE COUNTY DISTRICT SCHOOL BOARD,
RAYMA C. PAGE, HOWARD DeVORE,
JOHN WILLIAM MILLS, JOHN F. BECKETT,
ROBERT L. RATLIFF, RAY V. POTTORF,
and VINCENT DeSHAZO,

Defendants-Appellees.

No. 86-3309
Non-Argument Calendar

JULIA L. ASAM,

Plaintiff-Appellee,

versus

LEE COUNTY DISTRICT SCHOOL BOARD,
RAYMA C. PAGE, HOWARD DeVORE,
JOHN WILLIAM MILLS, JOHN F. BECKETT,
ROBERT L. RATLIFF, RAY V. POTTORF,
and VINCENT DeSHAZO,

Defendants-Appellants.

Appeals from the United States District Court
for the Middle District of Florida

(April 7, 1987)

Before RONEY, Chief Judge, HILL and KRAVITCH, Circuit Judges.

PER CURIAM:

Julia L. Asam filed a complaint against the Lee County District School Board and its members, the Lee County Superintendent of Schools, and the Director of Personnel for Lee County Schools. Asam sought money damages and other relief under 42 U.S.C.A. § 1983, alleging that her reputation was stigmatized by certain acts of school board personnel, and under a pendant state claim for defamation. After a two-day trial, the district court directed a verdict on both counts, and Asam appealed. The defendants appealed the denial of their motion for attorney's fees under 42 U.S.C.A. § 1988. Both appeals were consolidated by order of this Court. We affirm.

In May 1978, Asam, an annual contract teacher at North Fort Myers High School, was advised that her contract would not be renewed for the following term. Asam filed an application for unemployment compensation on June 12, 1978, and the Florida Division of Unemployment Compensation (Division) sent a questionnaire to Vincent DeShazo, Director of Personnel for the School Board. DeShazo checked the block on the form entitled "discharged for misconduct connected with work" and noted on the form that Asam's contract was allowed to expire. The form was signed and dated by DeShazo on June 15 and mailed to the Division. Asam was contacted by the Division on June 19 and contested the block checked by DeShazo. After being telephoned by the Division, DeShazo immediately advised that Asam had not been discharged for misconduct and mailed a corrected form on June 21. Copies of both forms were placed in Asam's personnel file.

In August 1978, Asam filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging sex discrimination as a basis for her discharge. The School

Board submitted a copy of Asam's entire personnel file, including a copy of the incorrect form, to EEOC. The incorrect form, Asam claims, stigmatized her in her attempt to find employment in the teaching profession, and should not have been forwarded to EEOC.

Plaintiff raises 17 claims of error containing 37 subissues on this appeal. These claims were examined individually but have been consolidated for this discussion. First, plaintiff claims that the district court erred in granting the defendants' motion for directed verdict at the close of plaintiff's case in chief. In reviewing the grant of a directed verdict,

> The court must view all the evidence, together with all logical inferences flowing from the evidence, in the light most favorable to the nonmovant.
>
> If the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that reasonable men could not arrive at a contrary verdict, granting of motions is proper. On the other hand, if there is substantial evidence opposed to the motions, that is, evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions, the motions should be denied, and the case submitted to the jury.

Love v. Sheffield, 777 F.2d 1453, 1454 (11th Cir. 1985), quoting Boeing Company v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc). A careful review of the record reveals that the act which formed the basis of the claim for liability was a mistake. The erroneous report to the Division was corrected immediately upon notification by telephone and shortly thereafter with a correctly completed form. There was no effective stigmatization arising from transmission of plaintiff's file to EEOC. Additionally, during the four-year period from her termination to the filing of this law suit, a review of her personnel file reflects only one written inquiry from a prospective employer. The responses to the prospective employer only stated the dates

of plaintiff's employment. No reference was made to the challenged incorrect form and there is no evidence that a prospective employer was ever made aware of its existence. When viewing the evidence in the light most favorable to the plaintiff, a directed verdict was proper.

Second, plaintiff asserts errors involving evidentiary rulings by the district judge. The district court is empowered with broad discretion in determining the admissibility of evidence and will be reversed only if its discretion has been abused. Loughan v. Firestone Tire & Rubber Co., 749 F.2d 1519, 1524 (11th Cir. 1985). A review of the record reveals no abuse of the court's discretion.

Third, plaintiff claims that the district court erred in denying her leave to amend her complaint. District courts exercise broad discretion when determining whether an amendment to the complaint should be allowed, once responsive pleadings have been filed, and a district court's denial of a motion to amend will be reversed only on a clear showing of an abuse of discretion. See Henson v. Columbus Bank & Trust Co., 770 F.2d 1566, 1574 (11th Cir. 1985). Plaintiff's motion to amend was filed after extensive pretrial activity and more than three years after the filing of the initial complaint. The district court was within its discretion in denying that motion.

Finally, plaintiff complains that the district court ordered a bifurcated trial with respect to the issues of liability and damages, and that the court allowed the defendants to examine plaintiff's witnesses during plaintiff's case in chief with respect to matters not covered on direct examination so that they would not have to be recalled during the defendants' case in chief. Both of these matters are within the sound discretion of the district court. See Fed. R. Civ. P. 42(b); T.D.S., Inc. v. Shelby Mut. Ins. Co., 760 F.2d 1520, 1535 (11th Cir. 1985) (district court's decision on separate trials

will not be disturbed absent an abuse of discretion); and United States v. Davis, 546 F.2d 583, 593 (5th Cir.), cert. denied, 431 U.S. 906 (1977) (the scope of cross-examination is a matter within the trial judge's sound discretion). The district court's rulings on these points cannot be faulted under the abuse of discretion standard of review.

The defendants appeal the denial of attorney's fees by the district court and have filed a motion for attorney's fees in this Court. The award of attorney's fees under 42 U.S.C.A. § 1988 is within the discretion of the district court and will not be reversed absent a showing of clear abuse of discretion. See Dowdell v. City of Apopka, Florida, 698 F.2d 1181, 1187 (11th Cir. 1983). No abuse is shown on this record. Defendants' motion for attorney's fees on this appeal is DENIED.

Because the district court neither misapplied the law nor abused its discretion, the judgments in 86-3142 and 86-3309 are due to be

AFFIRMED.